

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on June 25, 2010. A Petition for a two month extension of time is submitted herewith this Amendment. The Director is authorized to charge \$490.00 for the Petition for a two month extension of time and any additional fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00597 on the account statement.

Claims 1-2, 4-7, 17 and 22 are pending in the application. Claims 3, 8-16 and 18-21 were previously canceled. In the Office Action, Claims 1-2, 4-7, 17 and 22 are under 35 U.S.C. §102(b). In response, Applicants have amended Claim 1 and have canceled Claims 2 and 17 without prejudice or disclaimer. The amendments do not add new matter and are supported in the specification (Substitute Specification) at, for example, page 5, lines 7-9. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 1 and 4-7 are rejected under 35 U.S.C. §102(b) as being anticipated by Pharmacological Research, Vol. 45, No. 6 to Daba et al. ("*Daba*"). Claims 1-2, 4-7 and 22 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,904,924 to Gaynor et al. ("*Gaynor*"). Claims 1-2, 4-7, 17 and 22 are rejected under 35 U.S.C. §102(b) as being anticipated by DE 19907586 to Schaltenbrand et al. ("*Schaltenbrand*"). In contrast, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Currently amended independent Claim 1 recites a pet food composition for oral administration comprising an effective amount of an ingredient comprising an admixture of L-carnitine, one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, and a molecule that stimulates energy metabolism of a cell, wherein the molecule is selected from the group consisting of cardiolipin, nicotinamide, and combinations thereof. The amendment to Claim 1 is supported in Applicants' specification at, for example, page 5, lines 7-9. As is clearly shown in the Examples of the specification, the total lipids of adult mice are significantly increased by antioxidant cocktail associated to L-carnitine. Additionally, diets containing the antioxidant cocktail alone (diet C) or combined with L-

carnitine (diet D) increased the proportion of non-polar lipids to about 60% in hair sebum as compared to 46% in the control diet. Further, mice fed with the antioxidants of diet C had coats that were considered glossier than mice in other groups, and mice fed the diet containing the cocktail of antioxidants associated or not to L-carnitine (diet D and diet C, respectively) showed an increase in non-polar and polar lipids as well as total lipids in hair sebum when compared to the control diet A. See, specification, Examples. In contrast, Applicants submit that the cited references fail to disclose or suggest each and every element of the present claims.

Daba, *Gaynor* and *Schaltenbrand* fail to disclose or suggest a pet food composition for oral administration comprising an effective amount of an ingredient comprising an admixture of L-carnitine, one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, and a molecule that stimulates energy metabolism of a cell, wherein the molecule is selected from the group consisting of cardiolipin, nicotinamide, and combinations thereof as required, in part, by independent Claim 1. Instead, *Daba* is entirely directed to studies indicating the beneficial effects of ginkgo biloba and L-carnitine against lung toxicity induced by bleomycin. See, *Daba*, Abstract, page 3. *Gaynor* is entirely directed to a nutritional powder composition that is a blend of natural food and herbal products and is compounded in dry form that is readily soluble in a fluid for ingestion by humans. See, *Gaynor*, Abstract. *Schaltenbrand* is entirely directed to a daily nutritional supplement that contains components essential to the human body and on long-term administration ensures good health. See, *Schaltenbrand*, Description and Use. At no place in any of the disclosures do *Daba*, *Gaynor* or *Schaltenbrand* disclose or suggest a pet food composition for oral administration comprising an effective amount of an ingredient comprising an admixture of L-carnitine, one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, and a molecule that stimulates energy metabolism of a cell, wherein the molecule is selected from the group consisting of cardiolipin, nicotinamide, and combinations thereof as required, in part, by independent Claim 1.

The Patent Office states that “stimulating hair growth and modulating hair sebum lipid production and/or composition is inherent to the composition[s]” taught by the cited references See, Office Action, page 3, lines 17-19; page 4, lines 8-10; page 5, lines 20-22. Applicants disagree and submit that, since the Patent Office is unable to cite to any portion of *Daba*, *Gaynor*

or *Schaltenbrand* that discloses or suggests that the compositions stimulate hair growth and modulate hair sebum lipid production, the Patent Office seems to make an inherency argument that such a result would necessarily be obtained by administration of the compositions of *Daba*, *Gaynor* or *Schaltenbrand*.

However, to satisfy the test for inherency, the Patent Office would be required to show that the compositions of *Daba*, *Gaynor* and *Schaltenbrand* necessarily (i.e., always or automatically) provide for stimulating hair growth and modulating hair sebum lipid production. That condition simply is not met under the present circumstances. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. See, MPEP 2112. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). The Patent Office has failed to provide a basis in fact or any technical reasoning to support any possible determination that the compositions of *Daba*, *Gaynor* and *Schaltenbrand* necessarily (i.e., always or automatically) provide for stimulating hair growth and modulating hair sebum lipid production. Further, since the compositions of the cited references are not the same as the presently claimed compositions, the compositions of *Daba*, *Gaynor* and *Schaltenbrand* cannot inherently provide the same benefits as the claimed compositions.

Moreover, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Indeed, the Patent Office must be able to specifically identify the disclosure of each and every limitation of the claimed invention before anticipation may be found. Because *Daba*, *Gaynor* and *Schaltenbrand* fail to disclose or suggest each and every element of the present claims, Applicants submit that *Daba*, *Gaynor* and *Schaltenbrand* cannot anticipate the present claims.

For at least the above-mentioned reasons, Applicants respectfully submit that *Daba*, *Gaynor* and *Schaltenbrand* fail to disclose or suggest each and every element of the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1 and 4-7 under 35 U.S.C. §102(b) as being anticipated by *Daba* be reconsidered and withdrawn. Applicants also respectfully request that the rejection of Claims 1-2, 4-7 and 22 under 35 U.S.C. §102(b) as being anticipated by *Gaynor* be reconsidered and withdrawn. Applicants further respectfully request that the rejection of Claims 1-2, 4-7, 17 and 22 under 35 U.S.C. §102(b) as being anticipated by *Schaltenbrand* be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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